



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 14-1039

Released: July 23, 2014

Enforcement Advisory No. 2014-03

FCC ENFORCEMENT ADVISORY

OPEN INTERNET TRANSPARENCY RULE

BROADBAND PROVIDERS MUST DISCLOSE ACCURATE INFORMATION TO PROTECT CONSUMERS

Providers of broadband Internet access services must disclose accurate information about their service offerings and make this information accessible to the public. This requirement, known as the Open Internet Transparency Rule, has been in full force and effect since 2011.¹ The Transparency Rule ensures that consumers have access to information that helps them make informed choices about the broadband Internet access services they buy, so that consumers are not misled or surprised by the quality or cost of the services they actually receive. The rule also supports innovation and competition by ensuring that edge providers, including both startups and established providers, have information that may be relevant to the development of their business plans. The Commission takes the requirements of the Transparency Rule seriously, and we intend to take enforcement action against providers that do not comply with it.

Who Is Subject to the Transparency Rule? The rule applies to every provider of broadband Internet access services in the United States. This includes fixed broadband Internet access providers (for example, cable companies, landline telephone companies, and fixed wireless or satellite service providers), as well as mobile broadband Internet access providers (for example, mobile wireless providers that offer data plans for Internet access for smartphones).²

What Does the Transparency Rule Require? The Transparency Rule requires every fixed and mobile broadband Internet access provider to “publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.”³

¹ See 47 C.F.R. § 8.3 (Transparency Rule); see also *Preserving the Open Internet*, 76 Fed. Reg. 59,192, 59,192 (Sept. 23, 2011) (announcing November 20, 2011 as effective date of rule); *Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905, 17936–41, paras. 53–61 (2010) (*Open Internet Order*), *aff’d in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014). In January 2014, the United States Court of Appeals for the District of Columbia Circuit upheld the Transparency Rule, while overturning other portions of the FCC’s *Open Internet Order*. See *Verizon v. FCC*, 740 F.3d at 659.

² See 47 C.F.R. § 8.11 (defining “fixed” and “mobile” broadband Internet access service).

³ 47 C.F.R. § 8.3; see also *FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open Internet Transparency Rule*, Public Notice, 26 FCC Rcd 9411 (2011).

Accuracy is the bedrock of the Transparency Rule. Under the rule, all disclosures that broadband Internet access providers make about their network management practices, performance, and commercial terms of broadband services must be accurate. A core purpose of the Transparency Rule is to allow consumers to understand what they are purchasing.⁴ Accurate disclosures ensure that consumers—as well as the Commission and the public as a whole—are informed about a broadband Internet access provider’s network management practices, performance, and commercial terms. Thus, the Transparency Rule prevents a broadband Internet access provider from making assertions about its service that contain errors, are inconsistent with the provider’s disclosure statement, or are misleading or deceptive.

Importantly, the Transparency Rule can achieve its purpose of sufficiently informing consumers only if advertisements and other public statements that broadband Internet access providers make about their services are accurate and consistent with any official disclosures that providers post on their websites or make available in stores or over the phone. A provider making an inaccurate assertion about its service performance in an advertisement, where the description is most likely to be seen by consumers, could not defend itself against a Transparency Rule violation by pointing to an “accurate” official disclosure in some other public place. That would be impossible to reconcile with the purpose of the Transparency Rule. Thus, the Transparency Rule requires accuracy wherever statements regarding network management practices, performance, and commercial terms appear—in mailings, on the sides of buses, on website banner ads, or in retail stores.⁵

What Penalties Apply? Parties that violate the Transparency Rule may be subject to Commission enforcement, potentially including monetary penalties as set out in Section 503(b) of the Communications Act.⁶

Need More Information? Media inquiries should be directed to Mark Wigfield at 202-418-0253 or mark.wigfield@fcc.gov. Information about the FCC’s Open Internet proceeding is available at <http://www.fcc.gov/openinternet>. For general information on the FCC, you can contact the FCC at 1-888-CALL-FCC (1-888-225-5322) or visit our website at www.fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), (202) 418-0432 (TTY).

Issued by: Acting Chief, Enforcement Bureau

⁴ 47 C.F.R. § 8.3; *see also, e.g., Open Internet Order*, 25 FCC Rcd at 17936-37, para. 53 (“disclosure ensures that end users can make informed choices regarding the purchase and use of broadband service”).

⁵ In declining to *require* multiple targeted disclosures, the Commission observed in the *Open Internet Order* that, at a minimum, a provider potentially could satisfy the Transparency Rule by providing sufficient information in a single disclosure posted on its website. *See Open Internet Order*, 25 FCC Rcd at 17940, paras. 57-58. While the *Open Internet Order* thereby provides guidance on the minimum disclosure necessary to satisfy the rule’s requirement that sufficient information be disclosed, the Commission in no way suggested that the rule’s accuracy requirement would not apply to any additional assertions a provider may choose to make about its network management practices, performance, or commercial terms of service. Moreover, for the reasons noted in the text, disclosures cannot be sufficient to satisfy the rule if they are contradicted by providers’ other service descriptions, especially where the most easily seen descriptions, such as those in advertisements, are themselves inaccurate.

⁶ Section 503(b) of the Communications Act provides for maximum forfeitures ranging from \$16,000 to \$1,575,000 for any single act or failure to act, depending on the nature of the violation and the entity involved (excluding the broadcast of obscene, indecent, or profane language, which is subject to a higher maximum forfeiture). 47 U.S.C. § 503(b); *see also* 47 C.F.R. § 1.80(b). The Commission recently adjusted its forfeiture penalties to account for inflation in 2013. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013).